

The opinion in support of the decision being entered today was
not written for publication and is **not** binding precedent of the
Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES NICHOLAS SEYMOUR

MAILED

Appeal No. 2001-2014
Application 08/987,995

MAR 3 1 2003

ON BRIEF

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before FLEMING, RUGGIERO, and GROSS, **Administrative Patent
Judges**.

FLEMING, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 12 through 19, all the claims pending in the instant application. Claims 1 through 11 have been canceled.

The invention relates to portable radio telephones. See page 1 of the specification. Radio telephones by virtue of their portability are easily misplaced or stolen. This makes radio

telephones vulnerable to misuse by unauthorized persons, such as accessing personal or confidential information. See page 1 of Appellant's specification. Appellant overcomes this problem by providing a sensor for sensing the portable radio telephone coupled to a rest and an inhibiting means for automatically inhibiting operation of the portable radio telephone responsive to the sensor sensing absence of the intimate proximity to the rest. See pages 1 and 2 of Appellant's specification. Figure 2 is a schematic diagram of the main circuitry of the telephone. See page 3 of Appellant's specification. Figure 3 is a schematic diagram of the charger control circuitry. See page 3 of Appellant's specification. Figure 2 shows microprocessor 4 and Figure 3 shows Analogue to Digital Converter 30. Microprocessor 4 in combination with ADC 30 operates as a sensor for sensing the telephone being coupled to the charger, and hence the telephone's intimate proximity to the base unit charger. See page 6 of Appellant's specification. Microprocessor 4 controls the functions of the telephone and operates to inhibit the operation of the telephone when the telephone is not in proximity to the base unit charger. See page 6 of Appellant's specification.

Independent claim 12, present in the application, is reproduced as follows:

12. A radio telephone including a rechargeable power supply and having coupling means for connecting to a charging unit for charging the rechargeable power supply, the radio telephone comprising sensing means associated with the coupling means and operable to sense the absence or the presence of the charging unit being connected to the radio telephone, and inhibiting means configured to be responsive to the sensing means in such a manner that when the sensing means senses absence of the charging unit the inhibiting means automatically inhibits operation of the radio telephone.

References

The references relied on by the Examiner are as follows:

Saji	5,479,486	Dec. 26, 1995
French	5,760,690	Jun. 2, 1998
	(Filing date May 2, 1996)	

Rejections at Issue

Claims 12 through 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Saji and French.

Rather than repeat the arguments of Appellant or Examiner, we make reference to the briefs¹ and the answer for the respective details thereof.

¹Appellant filed an appeal brief on September 22, 2000. Appellant filed a reply brief on January 16, 2001. The Examiner mailed an office communication on February 12, 2001, entering the reply brief.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellant and the Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 12 through 19 under 35 U.S.C. § 103.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker** 977 F.2d 1443, 1445, 24 USPQ 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). With these principles in mind, we commence review of the pertinent evidence and arguments of Appellant and Examiner.

Appellant argues in the brief and reply brief that the Examiner has not established any evidence that shows that one of ordinary skill in the art would have reason to modify Saji with the teachings of French. Appellant agrees that French discloses a portable computer with an integrated alarm system which can disable the computer upon its unauthorized movement from a stationary portion. However, Appellant argues that the Examiner has not shown any teaching or suggestion that one of ordinary skill in the art would have modified Saji's radio telephone to include the French integrated alarm system used to disable a

computer, upon its unauthorized movement from a stationary position. See pages 4 and 5 of the brief. Appellant points out that Saji relates to a radio telephone set that signals alarm if and when the respective recharging contacts between the phone and the charger are not properly coupled together. Saji does not teach or suggest a need to solve the problem of the phone being stolen, but instead is concerned with the problem of ensuring that the telephone battery is properly being recharged.

Appellant points out that French discloses a portable computer with an integrated alarm system which provides for sounding of an alarm or disabling the computer upon unauthorized movement of the computer from an initial stationary position. French does recognize the problem of theft of a portable computer and provides a solution for protecting these computers. See page 3 of the brief. Appellant argues that there is nothing in Saji or French to suggest modifying Saji to provide a portable radio telephone provided with a sensor for sensing whether or not the telephone is coupled in intimate proximity to the rest and providing an inhibitor which inhibits operation of the telephone or locks the telephone against operation when the sensor senses that the telephone is absent from the rest. See Appellant's reply brief.

The Examiner states that Saji fails to teach means responsive to the sensor sensing the absence of the charging unit for automatically inhibiting operation of the radio telephone. The Examiner further points out that French teaches a portable apparatus providing an alarm system, which includes various sensors for monitoring whether the system is being moved from a stationary position. Then, the Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the above teachings of French to Saji, in order to provide security for cellular users. See page 3 of the Examiner's answer.

The Examiner further argues that even though it is true that French discloses a portable computer and not a radio telephone, the concept can apply to radio telephones. See page 5 of the answer.

When determining obviousness, the Examiner can satisfy the burden of showing obviousness of the combination only by showing some objective teaching in the prior art or individual to combine the relevant teachings of the references. **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), **citing In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir.

1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617. "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999, 50 USPQ2d at 1617, **citing McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

We note that French teaches that laptop or notebook computers are typically small lightweight systems which have full functionality of a full size computer system. See column 1, lines 8 through 10. French also recognizes that laptop or notebook computers are stolen at an alarming rate. See column 1, lines 18 through 25. French further teaches that the true value loss of laptop or notebook computers is not just the cost of the computer but the misappropriation of data stored therein. See column 1, lines 46 through 49.

Saji does not recognize the problem of theft for cordless telephone sets. Saji is concerned solely with the problem of insuring that the cordless radio set is being properly charged once its placed in the charging stand. See columns 1 and 2.

Furthermore, Saji does not provide any evidence that the cordless telephone set is expensive nor any evidence that there would be data stored in the cordless telephone set that could be misappropriated. Saji states the following:

As described above, according to the present invention, since a function is provided to detect whether the telephone apparatus is set in a predetermined position of the charging apparatus or not and since only when the telephone apparatus is set, the connection condition detecting means detects that the battery is not being charged, warning is provided only when it is necessary. Consequently, when the telephone apparatus is set in the charging apparatus, if the setting condition is improper and charging is impossible, warning is provided to attract the user's attention, thereby preventing unexpected accidents such as the abrupt interruption of a telephone call due to the voltage decrease of the storage battery.

See column 6, line 60, through column 7, line 5. We fail to find that Saji suggests a reason to provide an anti-theft mechanism for Saji's cordless telephone. Furthermore, we find that Saji is only concerned with the problem of proper charging. Therefore, we fail to find that one of ordinary skill in the art would have reason to take the Saji cordless telephone set and modify it and protect it against theft. Furthermore, we fail to find that French suggests a reason to provide French's anti-theft system to a cordless telephone. Therefore,

we fail to find that the Examiner has provided evidence in the record of why one of ordinary skill in the art would modify Saji to obtain the Appellant's invention.

In view of the foregoing, we have not sustained the Examiner's rejection of claims 12 through 19 under 35 U.S.C. § 103 as being unpatentable over Saji in view of French.

REVERSED

Michael Fleming
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